



POLICE DEPARTMENT

August 27, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Joseph Mignone
Tax Registry No. 942203
102 Precinct
Disciplinary Case Nos. 2012-7003 & 2012-8184

The above-named member of the Department appeared before me on June 28, 2013, charged with the following:

Disciplinary Case No. 2012-7003

1. Said Police Officer Joseph Mignone, assigned to the 102nd Precinct, on or about December 5, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer having been notified to appear at Queens South Traffic Violations Bureau, failed to appear, resulting in the dismissal of fourteen (14) summons cases.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
GENERAL REGULATIONS

Disciplinary Case No. 2012-8184

1. Said Police Officer Joseph Mignone, assigned to the 102nd Precinct, on or about May 4, 2012, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer having been notified to appear at Queens South Traffic Violations Bureau, failed to appear, resulting in the dismissal of seven (7) summons cases for seven (7) motorists.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and Respondent was represented by John Tynan, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

In Case No. 2012-7003, Respondent, having pleaded Guilty, is found Guilty as charged.

In Case No. 2012-8184, Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, a seven-year uniformed member of the service (UMOS), is currently assigned to the 102 Precinct. When he graduated from the Police Academy in 2006, he was assigned to the 73 Precinct. He worked there for approximately six months. Respondent was then transferred to the 77 Precinct, where he worked for approximately two years. Respondent was then transferred to his current command where he initially performed patrol duties on the day tour for two years and then was assigned to the summons unit for about a year. He is now assigned to the School Safety Unit.

In the summons unit, his responsibilities included "moving violations and parking violation to enforce the rules," which he would conduct from a radio motor patrol vehicle (RMP) or a three-wheel scooter. When asked if he was given any directions by his supervisors about where to target within the precinct, he said, "Nothing specific. Just accident prone locations. Depending on like the quarter of accidents. Where the most accidents occurred." Respondent

testified that while assigned to the summons unit, he would write "between 2 to 300" summonses a month and that he was assigned to the summons unit for "seven months to a year." In that year he wrote approximately 1500 to 2500 summonses.

Respondent worked the day tour from 0705 to 1540. Respondent acknowledged that while he was in the summons unit there were particular days that were set aside so he could testify at Queens South Traffic Violation Bureau (QSTVB). He stated, "Pretty much you're allowed time a day prior to prepare your testimonies." The days he would go to QSTVB "varied."

By December of 2011, Respondent was assigned to the School Safety Unit at Richmond Hill High School. Respondent stated, "It's a high I don't want to say high crime, but we have a lot of -- ... trouble at that location specifically ... plus we do have a gang issue." Respondent's responsibilities are to work with the school safety agents to enforce whatever rules they feel are necessary to keep the students safe. At dismissal, they try to keep the students moving so that they do not congregate outside the location. They also try to keep students from other schools from hanging out at their location to prevent any type of violence from occurring.

Respondent acknowledged that while he was in the School Safety Unit he still had to appear in court for the tickets that he had written while he was assigned to the summons unit.

Respondent acknowledged that he was notified "a week or two before" December 5, 2011 to appear at QSTVB. Respondent testified that the court appearances for QSTVB were scheduled for 1300 hours. Respondent further acknowledged that he did not go to court on December 5, 2011.

Respondent testified that he did not appear at QSTVB on December 5, 2011, because "I was manning my post at the high school....For me to be at traffic court at 1300, I would have to

leave about 12:30. And that's about the time dismissal begins at the high school. So I was conducting my daily activities." Respondent explained that as a school safety officer, he was responsible for keeping the students from congregating and loitering on school grounds and within the immediate area of the school. Respondent did not receive any reminder that day from his command that he had a post change from Richmond Hill High School to QSTVB. Respondent testified that he had written a summons inside the school earlier that day. He denied that he willfully failed to appear at QSTVB.

Respondent explained that he found out that he failed to appear at the end of his tour. Respondent recalled having traffic court sometime that week and when he checked his notifications to see when the date was, it happened to be that day. Upon discovering this failure, Respondent reported straight to his integrity control sergeant and told him that he missed traffic court.

Respondent acknowledged that he was notified before May 4, 2012 to appear at QSTVB. Respondent acknowledged that he did not appear on that date. Respondent testified that he did not appear at QSTVB on May 4, 2012, because "Again, I was involved with the same circumstances. I have to leave 1230 to report by 1300. At 1230 is my dismissal time. I was probably involved with my daily activities of keeping the students from congregating, and again it just slipped my mind." Respondent acknowledged that on that day, he had the seven summonses in his patrol bag. Respondent also acknowledged that he knew he had to go to QSTVB that day but stated, "I got involved with my daily activities at that time. It's dismissal time. I could have had a big crowd that day. Maybe, I guess, had my hands full." Respondent testified that he appeared "maybe four other times" at QSTVB, in the five-month period between December 5, 2011, and May 4, 2012, and that he did not miss any of those appearances. Since

receiving Charges and Specifications, Respondent has been notified to appear before QSTVB for summonses that he had written while he was assigned to the summons unit. Respondent has not missed any further court appearances.

On cross-examination, Respondent acknowledged that while assigned to the 73 Precinct he would write summonses and appear in court on those summonses. He would receive a notification from roll call before his court date and sign the notification slip to acknowledge receipt of the court notification.

Respondent testified that before officers went to court, they “were reminded at roll call” when they had to appear at court. Respondent also acknowledged that when he was assigned to the 72 Precinct he would write summonses and be notified by his roll call of upcoming court dates. He would acknowledge these notifications by signing the notification slip and he would receive a copy. Respondent stated that once he received the copy he would personally clip them to his locker, “So when I opened my locker, they’re there where I could see them.”

Respondent agreed that, as a summons officer, he wrote a vast number of summonses monthly and that he went to court on a regular basis. When asked if roll call would notify him of upcoming court dates, Respondent replied “When you’re in the summons unit, you don’t report to roll call.” Respondent claimed that when he was assigned to the 102 Precinct, he reported to the desk every morning and he would be handed his notifications at that time. Respondent agreed that he would sign his notifications acknowledging that he was in receipt and aware of his upcoming court dates.

Respondent agreed that he was notified by his command on November 17, 2011, about his court date on December 5, 2011. He agreed that when he signed the notification that he was aware of the court date. Respondent acknowledged that despite receiving this notification, he did

not appear at QSTVB on December 5, 2011. He agreed that he forgot because he got bogged down with his day to day duties at Richmond Hill High School.

Respondent testified that he is the only officer assigned to Richmond Hill High School that's engaged in school safety issues. He is the only officer in charge of that command. Richmond Hill High School has approximately 3,000 students. Respondent acknowledged that before December 5, 2011, he had to go to court while assigned to the School Safety Unit and he had made it to court on those dates. Respondent also acknowledged that even as "the only school safety officer" he had made it to court. When asked if on those days that he made it to court whether he had been post changed or someone relieved him, Respondent stated, "There was no call change. I called in and I went to court." Respondent testified that he advised his command that he had been notified for traffic court and had to be there by 1300 hours. Respondent acknowledged that he would then just go to court. Respondent further acknowledged that on December 5, 2011, he forgot to call it in and go to court.

Respondent acknowledged that on May 4, 2012, he was the only one assigned as the school safety officer for Richmond Hill High School. Respondent agreed that on May 4, 2012, he forgot to call into his command and advise them that he had to attend court.

Respondent testified that on December 5, 2011, he did not arrest any students while he was working at the school. Nor did he arrest any individuals on the school premises. Respondent also testified that he was not involved in any emergency that day.

Respondent acknowledged that Sergeant Elizabeth Paulson reminded him that morning that he had a post change to go to court that day. Respondent acknowledged that despite having no emergencies that day and also having been reminded by Paulson, he still forgot to go to court.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 10, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent argued in mitigation that he forgot about his court dates and that there was no malicious motivation. Respondent also claimed that he got caught up with the work he was doing at the school, where he had no relief from his duties. When he realized he missed his court date, he reported it right away and did not try to hide it. Respondent's attorney argued that a penalty of two days would be sufficient.

The Department Advocate (Advocate) recommended a twenty day penalty. The Advocate argued that police officers must be able to handle competing priorities. While Respondent was in a different capacity when he handled summons, he still needed to address the summons he had left over once he was in a new position. The Advocate cited cases for penalties received by other officers who became involved with their other duties so that they forgot.

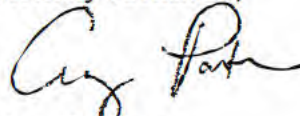
In one case, an officer working at an Atlas check point forgot about the court date, tried to get to court and got there late. As a result, 12 summons cases were dismissed and that officer received 20 vacation days as a penalty. *Case No 5185/11*, (January 18, 2013).

In another case, an officer came to court, but was unprepared. Although only four cases were dismissed, that officer lost ten vacation days. *Case No. 5159/11* (June 27, 2012). In *Case No. 7291/12*, (October 5, 2012), an officer went to court but brought the wrong summons packet. Because he was unprepared, 14 cases were dismissed. Although that officer had no prior disciplinary history, he lost 30 vacation days.

In all these cases, the Department argued, the officers had competing priorities. In the instant cases, Respondent received notifications for both court dates he missed. Even though Respondent had been assigned to a new post, he remembered all his other court dates.

The Court agrees with the Department. Respondent's failure to appear for his court date on December 5, 2011 at Queens South Traffic Violations Bureau resulted in 14 summons cases being dismissed. Respondent's failure to appear for his court date on May 4, 2012 at Queens South Traffic Violations Bureau resulted in seven summons cases being dismissed. In both cases Respondent was notified about the dates well in advance and in both cases Respondent failed to appear. Forgetting twice is not mitigation. The penalty recommended by the Department follows the precedence of recent Department cases. Accordingly, it is recommended that Respondent forfeit 20 vacation days.

Respectfully submitted,



Amy J. Porter

Assistant Deputy Commissioner – Trials

APPROVED

SEP 11 2013


RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JOSEPH MIGNONE
TAX REGISTRY NO. 942203
DISCIPLINARY CASE NOS. 2012-7003 & 2012-8184

Respondent received an overall rating of 4.0 "Highly Competent" on his annual performance evaluations in 2009, 2010 and 2011. [REDACTED]

[REDACTED] Respondent has no prior disciplinary record.

For your consideration.



Amy J. Porter
Assistant Deputy Commissioner Trials